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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,763	05/20/2002	Dianne Beverley Croteau	10748-006	3008

1059 7590 04/01/2004

BERESKIN AND PARR
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CANADA

EXAMINER

NELSON JR, MILTON

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,763

Applicant(s)

CROTEAU ET AL.

Examiner

Milton Nelson, Jr.

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MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 8-16, 18, 19, 21-26, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8-12, 14-16, 18, 19, 21-25, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information referred to in the information disclosure statement file October 2, 2003 has been considered.

Drawings

The objection to the drawings as failing to comply with 37 CFR 1.84(p)(5) has been overcome by Applicant's amendment to the specification.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the common edge having a "rounded" profile (see claims 11, 12, 24 and 25) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

The objection to the under 37 CFR 1.75(c) has been overcome by Applicant's amendment.

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Election/Restrictions

Applicant's election without traverse of Group 1, Subgroup 1, Figures 7-10, claims 1-3, 5-6, 8-12, 14-16, 18-19, 21-25, and 32-33 in Paper No. 11 is acknowledged. It appears that elected claims 13 and 26 are directed to non-elected Subgroups 7-10. The elected subgroup does not include the pommel, as set forth in claims 13 and 26. As such, claims 13 and 26 have been withdrawn from further consideration. Applicant has cancelled claims 4, 7, 17, 20, 27-31, and 34-38.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5, 6, 8-12, 14-16, 18, 19, 21-25, 32 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 8-10 of independent claim 1 are indefinite since Applicant defines the invention relative to a variable (a person) that is infinitely broad. A structural feature of the invention should be defined relative to other structural features of the invention. Note the recitation "a front-to-back extent from just forward of the person's sit bones to having the forward facing edge located just behind the person's knees, so that the second support surface extends under and supports the person's thighs". This recitation appears based on the dimensions of a person. Since dimensions vary from person to person, such renders the claim vague. It is suggested that Applicant

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substitute appropriate "adapted for" language into the claim. Similarly note independent claim 14. Also, in lines 11-13 of claim 14, it appears that Applicant is positively claiming a floor although the floor does not appear to be part of the instant invention. Note the recitation "above a floor on which the chair is resting". Clarification in the claim language is required. All of the dependent claims are indefinite since each depends from an indefinite claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 8-12, and 32, as best understood with the above cited indefiniteness are rejected under 35 U.S.C. 102(b) as being anticipated by Tholkes (5054852). Note the substantially planar first support surface (substantially horizontal surface of member 58, as shown in Figure 1); substantially planar second support surface (surface member 58 which intersects at a common edge with, and is angled forwardly and downwardly with respect to the first support surface, as shown in Figure 1). Note that a person is capable of being supported in the device of Tholkes such that second surface supports the person's thighs, wherein the front-to-back extent of the second surface is oriented just forward of the person's sit bones, wherein the forward facing edge is located just behind the person's knees, such that the second support

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surface extends under and supports the person's thighs. It can also be recognized from Figure 1 that the first support surface has a perimetrical extent that is sufficient to extend under a person's buttocks to support the sit bones. It can also be recognized from Figure 2 that the second support surface has a perimetrical extent that is sufficient to extend under and support a person's thighs. Also note the Figure 1, that the second support surface is angled downwardly in relation to the first support surface by an angle ranging from "about" 10 degrees to "about" 30 degrees. Also note the Figure 1, that the second support surface is angled downwardly in relation to the first support surface by an angle of "about" 20 degrees. The common edge between the first and second support surfaces, as shown in Figure 1, is considered to be a rounded profile. Note this profile appears at least as rounded as the common edge, rounded profile of the elected embodiment of the instant invention (note Figures 7-10). Additionally, it can be seen in Figure 1 that the first support surface has a front-to-back extent that is at least as great as the front-to-back extent of the second support surface.

Claims 14-16, 18, 19, 21-25 and 33, as best understood with the above cited indefiniteness are rejected under 35 U.S.C. 102(b) as being anticipated by Tholkes (5054852). Note the substantially planar first support surface (substantially horizontal surface of member 58, as shown in Figure 1); substantially planar second support surface (surface member 58 which intersects at a common edge with, and is angled forwardly and downwardly with respect to the first support surface, as shown in Figure 1). Note that a person is capable of being supported in the device of Tholkes such that

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second surface supports the person's thighs, wherein the front-to-back extent of the second surface is oriented just forward of the person's sit bones, wherein the forward facing edge is located just behind the person's knees, such that the second support surface extends under and supports the person's thighs. It is clear that the height of the first support surface above a floor on which the chair can rest is capable of allowing a person's feet to be squarely resting on the floor with the person is seated on the seat. It can also be recognized from Figure 1 that the first support surface has a perimetrical extent that is sufficient to extend under a person's buttocks to support the sit bones. It can also be recognized from Figure 2 that the second support surface has a perimetrical extent that is sufficient to extend under and support a person's thighs. Also note the Figure 1, that the second support surface is angled downwardly in relation to the first support surface by an angle ranging from "about" 10 degrees to "about" 30 degrees. Also note the Figure 1, that the second support surface is angled downwardly in relation to the first support surface by an angle of "about" 20 degrees. The common edge between the first and second support surfaces, as shown in Figure 1, is considered to be a rounded profile. Note this profile appears at least as rounded as the common edge, rounded profile of the elected embodiment of the instant invention (note Figures 7-10). Additionally, it can be seen in Figure 1 that the first support surface has a front-to-back extent that is at least as great as the front-to-back extent of the second support surface.

Response to Amendment/Arguments

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Applicant's responses filed October 2, 2003 and January 26, 2004 have been fully considered. Remaining issues are detailed in the above sections. Regarding claims 1 and 14, Applicant argues that the seat of Tholkes, when in the seated position, supports the buttocks and the thighs along a single support surface only, i.e., is a typical chair well known in the industry. The seat of Tholkes, when in the seated position, is capable of supporting the buttocks and the thighs along a single support surface only, however such is dependent not only upon the physical dimensions of the user, but also upon the orientation of the user on the seat. A small child sitting on the seat with its back against the seatback may have its heels on the second support surface, and its buttocks, thighs and calves on the first support surface. The same small child sitting far forwardly on the seat may have its buttocks on the first support surface, its thighs on the second support surface, and its calves unsupported. A large adult may sit towards the middle of the seat, with its buttocks on the first support surface, thighs contacting the second support surface, and feet on the floor below. As can be seen, there are numerous ways in which a person can be seated on the device of Tholkes, and clearly the device is capable of supporting a person in the manner claimed and argued. Applicant argues that the front-to-back extent of the chamfered edge of Tholkes is too short to provide independent support for the thighs, which is not surprising since its intended purpose is to remove interference with the calf muscles when the persons is standing as discussed above. This argument appears more limiting than the actual claim language, as "independent" support has not been set forth in the claims. Applicant argues that it is known that the waterfall edge of Tholkes does not provide

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sufficient front-to-back extent to support the thighs in an open angle at the hips (i.e., the second support surface has to extend from just forward of the person's sit bones to having the forward facing edge located just behind the person's knees). Tholkes does provide sufficient front-to-back extent to support the thighs in an open angle at the hips. This again depends on the physical makeup of the user and the orientation of the user on the seat. Applicant argues that Tholkes does not teach nor suggest the claimed seat or chair inasmuch as Tholkes does not teach that the second support surface is disposed substantially forwardly of the first support surface in a second plane angled downwardly in relation to the first plane and is adapted to support the person's thighs by having a forward facing edged and a front-to-back length extending a sufficient extent from just forward of the person's sit bones to having the forward facing edge located just behind the person's knees, so that the second support surface extends under and supports the person's thighs. Tholkes is capable of achieving this for the reasons indicated above. Applicant argues that the claimed structure allows for independent support of the thighs, which is not only different from Tholkes, but provides significant and unanticipated advantages thereover. This argument is more limiting than the actual claim language, as indicated above.

Applicant's arguments regarding application of the prior art of claims 27-29 is now moot in view of the cancellation of those claims. Applicant argues that new independent claim 32 is based on previous claim 29 and recites a method of constructing. Claim 32 appears to be a dependent claim is recites additional article limitations. It has been addressed in the rejection above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

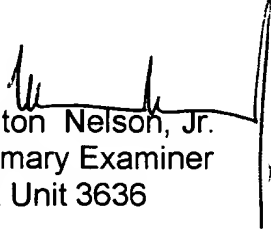
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
March 31, 2004